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4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA

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7 UNITED STATES OF AMERICA,

Case No. 2:18-CV-1564 JCM (NJK)

8 Plaintiff(s),

ORDER

9 v.

10 SUSAN M. HICKS, et al.,

11 Defendant(s).

12  
13 Presently before the court is the United States of America's ("the government") motion  
14 for default judgment against defendant Susan M. Hicks ("defendant"). (ECF No. 9). Defendant  
15 has not filed a response, and the time to do so has passed.

16 **I. Background**

17 The instant action arises from defendant's failure to file income tax returns or pay tax on  
18 her income in 2011 and 2012. (ECF No. 9 at 2). The IRS sent her statutory notices of  
19 deficiency, and defendant did not petition the U.S. Tax Court. *Id.* Pursuant to 26 U.S.C.  
20 § 6020(b), the IRS made income tax assessments against defendant, which remain unpaid. *Id.*

21 The government filed the instant action against defendant on August 20, 2018. (ECF No.  
22 1). The government seeks to reduce its tax assessments against defendant to a judgment and  
23 foreclose on the federal tax liens against her home located at 4338 Cobblehill Way, North Las  
24 Vegas, Nevada 89032. *Id.* Defendant never responded, the government moved for entry of  
25 clerk's default, and the clerk entered default on December 10, 2019. (ECF Nos. 7; 8).

26 The government now moves for default judgment. (ECF No. 9).

27 ...

28 ...

## 1      **II.      Legal Standard**

2            Obtaining a default judgment is a two-step process. *Eitel v. McCool*, 782 F.2d 1470,  
3      1471 (9th Cir. 1986). First, “[w]hen a party against whom a judgment for affirmative relief is  
4      sought has failed to plead or otherwise defend, and that failure is shown by affidavit or  
5      otherwise, the clerk must enter the party’s default.” Fed. R. Civ. P. 55(a). Federal Rule of Civil  
6      Procedure 55(b)(2) provides that “a court may enter a default judgment after the party seeking  
7      default applies to the clerk of the court as required by subsection (a) of this rule.”

8            The choice whether to enter a default judgment lies within the discretion of the court.  
9      *Aldabe v. Aldabe*, 616 F.3d 1089, 1092 (9th Cir. 1980). In the determination of whether to grant  
10     a default judgment, the court should consider the seven factors set forth in *Eitel*: (1) the  
11     possibility of prejudice to plaintiff if default judgment is not entered; (2) the merits of the claims;  
12     (3) the sufficiency of the complaint; (4) the amount of money at stake; (5) the possibility of a  
13     dispute concerning material facts; (6) whether default was due to excusable neglect; and (7) the  
14     policy favoring a decision on the merits. 782 F.2d at 1471–72. In applying the *Eitel* factors, “the  
15     factual allegations of the complaint, except those relating to the amount of damages, will be  
16     taken as true.” *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977); *see also* Fed. R.  
17     Civ. P. 8(d).

## 18     **III.      Discussion**

19            After considering the *Eitel* factors, the court finds good cause to grant plaintiff’s motion  
20     for default judgment. Plaintiff will be prejudiced if default judgment is not entered, as plaintiff  
21     will be left without any legal remedy to recover defendant’s tax assessments. *See Eitel*, 782 F.2d  
22     at 1471–72. Further, there is no possibility of a dispute concerning the material facts of this case,  
23     as the record clearly indicated that defendant failed to file a tax return or otherwise pay taxes in  
24     2011 and 2012, she remains liable for the income tax assessments for those years, and she has  
25     failed to file an answer contesting the government’s claims. *See id.* There is no indication in the  
26     record that defendant’s continued default is due to excusable neglect. *See id.*

27            Thus, all that remains is to determine what amount to award. Under 26 U.S.C. § 7402(a),  
28     the government is entitled to reduce federal tax assessments to judgment. Although the

1 government bears the burden of proof in a tax-collection action, evidence of tax assessments  
2 “establish[] a prima facie case.” *Oliver v. United States*, 921 F.2d 916, 919 (9th Cir. 1990).

3 Here, the government certifies its assessments against defendant by providing two Form  
4 4340s. (ECF Nos. 9-2; 9-3). These forms lay the necessary foundation and give the assessments  
5 a “presumption of correctness.” *See United States v. Janis*, 428 U.S. 433, 440 (1976).  
6 Accordingly, the court accepts the government’s representation that “[t]he current balance of  
7 these assessments, for all of the tax types and tax periods at issue, is \$74,564.56 as of December  
8 31, 2019.” (ECF No. 9 at 8). Further, the government is entitled by statute to collect statutory  
9 additions, including interest and certain penalties. 26 U.S.C. §§ 6601(a), 6621, 6622(a), 6651,  
10 6654.

11 In light of the foregoing, the court will enter default judgment in the amount of  
12 \$74,564.56 in favor of the government and against defendant. The court will also assess the  
13 interest, penalties, and statutory additions against defendant.

14 The government also asks the court to order the judicial foreclosure of defendant’s home.  
15 The government notes that “[b]y operation of law, federal tax liens arose in favor of the United  
16 States at the time of assessment and attached to all property of [defendant] pursuant to 26 U.S.C.  
17 §§ 6321 and 6322.” (ECF No. 9 at 9). The government perfected these liens when it recorded a  
18 notice of federal tax lien on October 20, 2015. (ECF Nos. 1 at 4; 9 at 9). Thus, the government  
19 is entitled to foreclose in its liens.

20 The government represents that it will file a proposed order of foreclosure and decree of  
21 sale setting forth the terms and conditions of the sale of the property

#### 22 **IV. Conclusion**

23 Accordingly,

24 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that the government’s motion  
25 for default judgment (ECF No. 9) be, and the same hereby is, GRANTED.

26 IT IS FURTHER ORDERED that the clerk of court shall enter default judgment in favor  
27 of the government pursuant to 26 U.S.C. § 7402 in the amount of \$74,564.56, plus interest and  
28 statutory additions in accordance with 28 U.S.C. § 1961(c)(1) and 26 U.S.C. §§ 6601 and 6621,

1 which will accrue from December 31, 2019 until judgment is paid, less any applicable credits  
2 and payments.

3 IT IS FURTHER ORDERED that the government shall submit its proposed order of  
4 foreclosure and decree of sale setting forth the terms and conditions of sale of the property on or  
5 before January 6, 2020.

6 DATED December 23, 2019.

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8 UNITED STATES DISTRICT JUDGE